September 13, 2004 Monthly Meeting &
Family Court News & Developments

WELCOME! The Second Judicial District Family Court is expanding the monthly Family Court "brownbag" meeting summaries by including a "Family Court News & Developments" component, which will include noteworthy developments in N.M. Family Law and select written opinions filed by the District Court judges of the 2nd Judicial District which may be of interest to the bar and public.

I. FAMILY LAW NEWS & DEVELOPMENTS

DOMESTIC RELATIONS TASK FORCE PROPOSED RULE

Thank you Elizabeth Whitefield JD for providing us with a copy of the draft mandatory discovery/disclosure rule under consideration by the Chief Justice's Domestic Relations Task Force. The proposed rule, if adopted, will become a part of the NM Rules of Civil Procedure for the District Courts applicable to domestic relations cases as currently defined in the rules of civil procedure: The text of the proposed rule as of July 8, 2004 is:

1-123. Mandatory Disclosure in Domestic Relations Actions; Affidavits Of Disclosure.

A. **Purpose**. A duty to disclose is hereby created in order to:

(1) Decrease acrimony and mistrust between parties involved in domestic relations disputes;

(2) Lessen legal fees and costs of domestic relations disputes;

(3) Implement fiduciary duties that may exist between parties;

(4) Assist parties to make honest, full and complete disclosure of the existence and value of assets, debts and income; and

(5) Encourage parties to restructure their relationships inexpensively, efficiently and respectfully.

B. **Duty to disclose.** Consistent with NMRA 1-026 and as provided in this rule, parties to domestic relations actions

shall disclose to other parties all relevant information concerning characterization, valuation, division or distribution of assets or liabilities, whether separate or community properly, in any domestic relations action involving the distribution of property, or the establishment or modification of child support or spousal support.

C. **Affidavits Of Disclosure.**

(1) **Preliminary affidavit of disclosure.** Unless otherwise ordered by the court, or provided in this rule:

(a) In a domestic relations action involving property and debt distribution or characterizations, within 45 days of service of process on respondent, the petitioner shall serve on the respondent, and the respondent shall serve on the petitioner, an affidavit of disclosure containing a monthly income and expense schedule, a community property and liabilities schedule and a separate property and liabilities schedule, in compliance with NMRA 4A-122, 4A-131 and 4A-132, respectively. The schedules shall be accompanied by a list of the documents utilized to complete the schedules.

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n an action concerning spousal support or child support, within 45 days of service of process on the opposing party, the petitioner or movant shall serve on the opposing party, and the opposing party shall serve on the petitioner or movant shall serve on the opposing party, and the opposing party shall serve on the petitioner or movant, an affidavit of disclosure containing the following financial information:

1. federal and state tax returns, including all schedules, for the year preceding the request;
2. W-2 statements for the year preceding the request;
3. Internal Revenue Service Form 1099s for the year preceding the request;
4. Work-related daycare statements for the year preceding the request, if applicable;
5. Dependent medical insurance premiums for the year preceding the request, if applicable; and
6. Wage and payroll statements for four months preceding the request.

Supplemental affidavit of disclosure. The initial affidavit of disclosure shall be supplemented in accordance with Rule 1-

026(e)(2) and Rule 1-026(e)(3). The supplemental affidavit shall be served upon the opposing party at least five (5) days before trial and shall be delivered to the trial judge at least three (3) days before trial.

(2) **Affidavits not filed; certificate of service.** Affidavits of Disclosure shall not be filed with the clerk. A certificate of service of the Affidavit of Disclosure shall be filed with the clerk.

D. **Child support worksheets.** In actions involving child support, the parties shall also each complete a child support worksheet. See NMSA '40-4-11.1. Unless otherwise stipulated by the parties or ordered by the court, the worksheets shall be served at least five (5) days before trial, and shall be delivered to the trial judge at least three (3) days before trial, but shall not be filed with the clerk.

E. **No limitation of discovery.** This rule does not limit otherwise permissible discovery pursuant to Rules 1-026 to 1-037.

F. **Failure to comply.** The court may assess costs (sanctions including) and attorney fees against a party who fails to make timely and full disclosure pursuant to this rule. The court also may impose sanctions (set forth?) to Rule 1-037.

SUPREME COURT ORDER IMPLEMENTING AMENDMENTS TO THE SOLDIERS & SAILORS CIVIL RELIEF ACT OF 1940

On August 31, 2004, the NM Supreme Court released the following Order implementing recent amendments to the Soldiers & Sailors Civil Relief Act of 1940. The texts of the Supreme Court's Order is as follows:

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 31, 2004
NO. 04-8500

IN THE MATTER OF THE ADOPTION OF A POLICY
CONCERNING MEMBERS OF THE ARMED FORCES
CALLED INTO ACTIVE DUTY

ORDER

WHEREAS, this matter came on for consideration upon the

Court's own motion to establish a policy concerning members of the armed forces called into active duty and the Court being sufficiently advised, issued an order on March 23, 2003, adopting

a "Policy Regarding Court Processes As It Affects Military Personnel on Active Duty"; WHEREAS, military conflict with Iraq continues; WHEREAS, the ongoing war will create an increased likelihood that a significant number of judges throughout the State of New Mexico will encounter litigants who have been called to active duty service from reserve national guard and active duty units;

WHEREAS, the ongoing war will give rise to issues related to the impact of military service in civil and family law litigation;

WHEREAS, the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. app. §§ 501-593 (2000), was replaced by the Servicemembers' Civil Relief Act, 108 Pub. L. 189, 117 Stat 2835, 2003 Enacted H,R. 100; 108 Enacted ,H.R, 200, on December 19, 2003;

WHEREAS, Service members' Civil Relief Act should be construed liberally for the protection and benefit of those who have dropped their daily affairs to answer the call of our country;

WHEREAS, State statutes, including NMSA 1978, § 10-6-1 (1943) ("Effect of public officer or employee entering military service"), NMSA 1978, § 20-4-8 (1987) ("Exemptions; jury duty and civil process; equipment."), NMSA 1978, §§ 28-15-1 to 28-15-3 (1941) ("Reemployment of persons in armed forces"), should be construed liberally for the protection and benefit of those who have dropped their daily affairs to answer the call of our country;

WHEREAS, the Judicial Branch should also liberally construe Personnel Rule 30(A) ("Military Leave") for the same purposes; and

WHEREAS, this Court is mindful of the impact the ongoing war can have on a litigant's access to the courts, and being otherwise sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the following policy regarding court processes as it affects military personnel on active duty hereby is ADOPTED, EFFECTIVE IMMEDIATELY:

POLICY REGARDING COURT PROCESSES AS IT AFFECTS MILITARY PERSONNEL ON ACTIVE DUTY

It is the policy of the Supreme Court of the State of New Mexico that in these times of war strict application of the Servicemembers' Civil Relief Act, 108 Pub. L. 189, 117 Star 2835, 2003 Enacted H.R. 100; 108 Enacted .H.R. 200, NMSA 1978, §§ 10-6-1, 20-4-8, 28-15-1 to 28-15-3, and Judicial Branch Personnel Rule 30 (A) is required for the protection of litigants and court personnel who are called to active duty. All courts of the State of New Mexico are encouraged to expedite court processes to the extent practical and feasible when the court is made aware that a party or parties are on active duty. Moreover, in those situations under the Servicemembers' Civil Relief Act where an attorney is required for a party not represented by counsel, the courts are encouraged to make the appropriate referral to the New Mexico State Bar Association, Christine Joseph, Manager for Lawyers Care (800-876-6227 or 505-797-6054). Information regarding the Servicemembers' Civil Relief Act can be accessed at <http://verterans.house.gov> or http://www.abalegalservices.org>.

IT IS SO ORDERED.

Chief Justice Petra Jimenez Maes

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Richard C. Bosson

Justice Edward L. Chavez

UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT

Judge Romero rules that post-divorce conversion of retired pay to VA disability pay does not preclude enforcement of Final Decree, (as opposed to an MSA) awarding ex-wife a marital interest in military pension. The text of Judge Romero's opinion filed August 20, 2004 and consequently is in the public domain is as follows:

[*BEGINNING OF OPINION*]

August 20, 2004

Robert G. Marcotte, Esquire
Post Office Box 1188
Albuquerque, NM 87103-1188

Heidi S. Webb, Esquire
4301 The 25 Way NE
Albuquerque, NM 87109

Re: Sherry R. Hadrych, n/k/a Foote vs. Timothy B. Hadrych, DR 1994-05193

This case came before the Court upon petitioner's *Motion for Order to Show Cause* and *Order to Show Cause* filed February 17, 2004. At issue is whether after a *Final Decree* is entered, a retired veteran may reduce or eliminate his former spouse's marital interest in a military retirement by waiving retired pay for Veterans Administration [hereinafter "VA"] disability pay. The Court decides the issue as follows based upon the following analysis:

I. *Background*

Husband entered active duty as an enlisted member of the United States Air Force in January 1976. The parties married December 21, 1979 and divorced March 13, 1991.[1] Husband remained on active duty throughout this sixteen (16) year marriage. Wife was a homemaker and the primary care provider for the parties' two (2) children during the marriage and earned no pension entitlements for her contributions to the household. After the divorce, Husband remained on active duty until his retirement from the Air Force on June 1, 2000, when he

[1] This marriage culminated in litigation that has continued for almost ten (10) years. The most contentious issues arose from Husband's failure to provide Wife with discovery relating to the calculation of his child support obligation and failure to pay debt due to Wife as the Court ordered. *See e.g. Order* entered 6/8/99; *Petition for Order to Show Cause* entered 3/24/99.

immediately began receiving retirement pay based upon his longevity. [2] Husband earned a total of 290 months of creditable military service towards retirement during his military career; 195 of which were earned during this marriage. Husband's military pension vested and matured [3] in January 1996. This case was tried March 13, 1996 and the *Final Decree* was entered on April 26, 1996. The Court awarded Wife a marital interest in the military pension which it described as:

> One-half of respondent's retirement pay attributable to the period of time the parties were married, December 21, 1979, through March 13, 1996, from the United States Air Force. [4]

Mattox v. Mattox, 105 N.M. 479, 483, 734 P.2d 259 P.2d 259, (Ct. App. 1989) and Ruggles v. Ruggles, 116 N.M. 52, 66, 860 P.2d 182 (Sup. Ct. 1993) had been decided when this case was tried on the merits. Those cases mandated Wife's entitlement to payments for Wife's marital interest in Husband's hypothecated retirement pay when the *Final Decree* was entered, irrespective of his decision to remain on active duty. The parties apparently concluded, however, that there was an ambiguity in the *Final Decree.* The parties clarified what they considered an ambiguity on December 11, 1998 by entry of a stipulated *Order and Judgment* which adjudged that Wife's interest was payable when Husband retired. Wife's interest in the pension was quantified when Husband's retired as the fractional equivalent of ½ of 195 months/290 months, or 33.16%.

II. *POST-RETIREMENT TRANSACTIONS*

Wife received payment for her interest in the pension following Husband's retirement through December, 2003 from the Defense Finance and Accounting Service, [hereinafter "DFAS"]. In December 2003 Wife received notice from DFAS that payments would cease the following month. The termination of DFAS

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[2] The typical twenty (20) year career is the point at which most members of the federal armed forces, with some exceptions, are entitled to retire and receive military retirement payments. See *Calling for a Truce on the Military Pension Battlefield: A proposal to Amend the USFSPA,* 186 MIL. L. REV. 40, fn. 6 (June, 2001). The amount of longevity retirement pay is calculated based upon the number of years of active duty service and the rank held the day preceding retirement. *See* 10 U.S.C. § 1406.

[3] An employee's interest in a retirement is "vested" when he or she has the right to receive retirement benefits at normal or early retirement whether or not the employee continues to work for the employer until retirement. An employee's interest has "matured" when the employee is actually eligible to retire and receive benefits. *See* Ruggles v. Ruggles, (II) 116 N.M. 52, 55, fn. 2, 860 P.2d 182 (1993).

[4] See page four (4) ¶ 3 C, *Final Decree* entered April 26, 1996.

payments to Wife was precipitated by Husband's unilateral decision to voluntarily waive 100% of his retired pay for an equivalent amount of VA disability pay [5] based upon a post-retirement 100% VA disability rating. [6] The advantages to Husband of electing to waive retired pay for VA disability pay were threefold:

(1) Because VA disability pay is exempt from federal state and local taxation, he obtained a net increase in retirement income. See 38 USC § 3101;

(2) Because VA disability pay is excluded from the statutory definition of "disposable retired pay" subject to direct payment to a former military spouse; DFAS terminated payments to Wife and Husband received an additional amount of money each month in the form of VA disability pay which Wife would have otherwise received, but for his unilateral waiver of retired pay. See 10 USC 1408 (a) (4) (B), and

(3) VA disability pay is exempt from liens and the claims of creditors, including those of Wife. See 38 USC 5301 (a) (1).

In January and February 2004, Husband received $2,000.00 tax-free VA disability pay in lieu of retired pay. Since March 2004, Husband has received an estimated $1,250.00 as VA disability pay and $750.00 per month as "concurrent receipt" pay, according to his testimony. Wife's marital interest attaches to the "concurrent receipt pay" by virtue of Section 662 of the National Defense Appropriations Act of 2004 [7] which became effective on January 1, 2004. Wife's

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[5] The federal government enacted a statutory system that operates to prevent retired veterans from receiving dual compensation. Thus, for a military retiree to receive VA disability pay; the retiree is required to waive an equivalent amount of retired pay. See 38 USC § 5305. Retired military officers, as opposed to retired enlisted personnel, are required to waive a portion of their retired pay to receive U.S. Civil Service pay. See 5 USC § 5532 (b). The waiver of retired pay pursuant to the foregoing statues are referred to as "dual compensation offsets" which have caused a tremendous amount of litigation in divorce cases throughout the nation over the past twenty (20) years. The reason is that state courts may not treat VA disability pay as property divisible upon divorce because it is specifically excluded from the definition of "disposable retired pay", which state courts may treat as property divisible upon divorce. See 10 U.S.C. § 1408 (a),(4),(C),

[6] There are two (2) types of VA disability ratings, both of which must be for a qualifying "service connected" injury as determined administratively by the VA. The first is for an injury occurring during war, 38 U.S.C. § 310, and the second for injury occurring during peacetime service, 38 U.S.C. § 331. The VA disability rating award is calculated as a percentage according to the seriousness of the injury and the degree to which the veteran's ability to earn a living has been impaired. *See* 38 U.S. C. §§ 314, 355. In the case of a military retiree, the VA disability percentage is applied to the retiree's gross retired pay to quantify the amount of VA "disability pay" the retiree is entitled to receive if an equivalent amount of retired pay is waived. *See* 38 U.S.C. § 5305.

[7] *See* 10 U.S.C. § 1414 (c) (1) (a) (effective January 1, 2004).

marital interest in the "concurrent receipt pay" is calculated as a fraction of Husband's $750.00 "concurrent receipt pay" but not to his VA disability pay, and equals approximately $248.70 monthly. The financial consequences to Wife of Husband's unilateral decision to waive retired pay was that her interest in the pension was eliminated in January and February, 2004 and reduced from approximately $663.20 monthly to approximately $248.50 thereafter. Although 100% disabled according to the VA, Husband is employed full-time by Lockheed Corporation and testified that he earns $3,200.00 net monthly from that employment.

Wife seeks enforcement of the *Final Decree* by a money judgment against Husband to reimburse the loss of her 33.16% interest in the pension occasioned by his waiver of retired pay for each month since direct payment from DFAS ceased. The Court rules that that Wife is entitled to direct payment from DFAS of 33.16% of Husband's "concurrent receipt pay" beginning January 1, 2004 pursuant to 10 USC § 1404 (c) (1) (a).

III. *ANALYSIS*

The Uniformed Services Former Spouse Protection Act, 10 USC § 1408 et seq. was enacted in direct response to *McCarty v. McCarty*, 453 U.S. 210, 101 S.Ct. 2728, 69 LEd 2d 589, (1981). There the Supreme Court held that federal law preempted states from dividing military retirements as community property in divorce cases. The USFSPA authorizes courts in community property states, like New Mexico, to divide "disposable retired pay" as community property in domestic relations cases with certain limitations. See 10 U.S.C. § 1408 (c). One is the USFSPA specific exclusion of VA disability pay. See 10 USC § 1408 (a) (4) (C). In *Mansell v. Mansell*, the Supreme Court held that state courts are preempted by federal law - the USFSPA and the "Supremacy Clause - from treating VA disability pay as marital property divisible upon divorce. *Mansell*, 490 U.S. at 81. Husband contends that the Court is preempted from enforcing that portion of the *Final Decree* which awarded Wife a fractional interest in the pension based upon these authorities.

Husband's contention was considered and rejected in *Scheidel v. Scheidel*, 129 N.M. 223, 4 P.3rd 670, 2000-NMCA-059 (Ct. App. 2000). There, husband's military pension was vested and matured at the time of the divorce and wife was awarded a 50% interest of the community property share of his military retirement benefits. Post-divorce, husband waived his retired pay pursuant to 38 U.S.C. § 5303 to receive 100% VA disability pay. Wife motioned the court seeking to enforce an indemnification provision in a Marital Settlement Agreement [hereinafter "MSA"], which was incorporated into the *Final Decree*. The Court held that *Mansell* precludes state courts from dividing the military retiree's disability pay but does not preclude state courts from enforcing indemnity provisions in an MSA, provided VA disability benefits are not specified as the source of payment. Of significance in the Court's analysis of *Scheidel,* 129

N.M. at 223 was the distinction between a pre-and post judgement waiver of retired pay for VA disability pay. General Scheidel waived retired pay after the adjudication and the Final Decree and by his free and voluntary act. Of significance is that just as in *Scheidel*, when the Haydrychs divorced there was no dual compensation offset. Additionally significant is that when the Court awarded Wife a marital interest in the military pension, it did not exclude subsequent conversions of Husband's military retirement pay to VA disability pay. The New Mexico Supreme Court has said that where a divorce decree is clear and unambiguous, no matters debors the record may be used to change its meaning or even to construe it. *Chavez vs. Chavez*, 82 NM 624, 485 P.2d 735, (1971). The award to Wife of an interest in the military pension described in *Final Decree* was unconditional.

Counsel for Husband seeks to distinguish *Scheidel* because the Court here did not include an indemnity provision in the *Final Decree*. Whether the Court enforces its Final Decree based upon the voluntary undertaking of a retiree set forth in an MSA, i.e. upon a "contractual theory" or based upon the Court's inherent authority to enforce its judgment, is irrelevant to Husband's "preemption" argument. There are compelling reasons to enforce the Final Decree without regard to the absence of an "indemnity" provision in the judgment. New Mexico courts have not permitted an employee-spouse to impair the non-employee spouse's interest in vested and matured retirement benefits. *See Mattox v. Mattox*, 105 N.M. 479, 483, 734 P.2d 259 (Ct. App. 1987) and *Ruggles v. Ruggles II*, 116 N.M. 52, 55, 860 P.2d 182 (1993). In *Irwin v. Irwin*, 121 N.M. 266, 910 P.2d 342, (Ct. App. 1995), the Court held that where an employee-spouse has a choice of pension options, he should not be permitted to defeat or reduce the interest of the non-employee-spouse. *See also In re Marriage of Stenquist*, 21 Cal.3d 779, 582 P.2d 96, 100, 148 Cal.Rptr. 9, (1978). To allow Husband to subvert the obligations incurred in the Final Decree would be to permit what *Irwin*, *supra* prohibits.

Other courts considering the issue have chosen to enforce decrees in the absence of voluntary undertakings to indemnify a former spouse for reductions of marital interests in a military pension occasioned by post-decreetal waivers of retired pay for VA disability pay. *Danielson v. Evans*, 201 Ariz. 401, 36 P.3d 749, (Ct. App. 2001), is an example. There, following litigated hearings before a Special Master whose recommendations were adopted in the decree, the trial court required husband to reimburse wife for decreases in monthly retirement benefits after he unilaterally waived retirement pay for disability pay. The trial court was affirmed on appeal, although there was no indemnity provision in the decree.

Scheidel and *Danielson*, represent an emerging majority view of courts that have considered the issue that neither the USFSPA nor *Mansell* preempt state courts from enforcing decrees where post-judgment the retiree converts retired pay for VA disability pay. The prevailing view is that courts may and should protect the

marital interests of former spouses in military retirements from post-judgment conversions to VA disability pay, provided disability payments are not identified as the source of reimbursement. *See* *Clauson s. Clauson*, 831 P.2d 1257 (Alaska, 1992); *Krempin v. Krempin*, 70 Cal. App. 4th 1008 (Ct. App. 1999); *Abernathy v. Fishkin*, 699 So. 2d 235 (Fla. Sup. Ct. 1997); *McHugh v. McHugh,* 124 Idaho 543, 861 P.2d 13 (1993); Campbell v. Campbell, 474 So.2d 1339 (La. Ct. App. 1985); *Strassner v. Strassner*, 895 S.W.2d 614 (Mo. Ct. App. 1995); *Troxill v. Troxill*, 2001 OK Civ. App. 96, 26 P.3d. 1169 (Okla. Ct. App. 2001); *Black v. Black,* 2004 MW 21, 842 A.2d 1280 (Me. 2004), *Gatfield v. Gatfield*, 682 NW.2d. 632, (Ct. App. Minn. 2004); *Johnson v. Johnson*, 337 S.W.2d 892 (Tn. Sup. Ct. 2003); *Owen vs. Owen*, 14 Va. App. 623, 419 S.E. 2d 267 (Va. Ct. App. 1992.). Not all courts adhere to this view however, see example *In Re Marriage of Pierce,* 26 Ks. App. 2d 236, 982 P.2d 995 (1999).

Husband's contention is, in effect, an argument that he is entitled to unilaterally accomplish a *de facto* modification of the *Final Decree* by a change in circumstances which occurred after the adjudication. Suffice it to say that such a contention is at odds with the finality accorded divorce decrees in New Mexico. *See e.g.*, Smith v. Smith, 98 N.M. 468, 649 P.2d 1381 (1982). It is well established that a right directly determined by a court of competent jurisdiction cannot be modified in subsequent proceedings between the parties because public policy calls for the finality of judicial determinations. *See e.g.*, *Kaye v. Cooper Groc.*, 63 N.M. 36, 312 P.2d 798 (1957).

Wife requests this Court to take one step beyond *Scheidel* and enforce the *Final Decree*, notwithstanding that the basis for enforcement does not arise from a contract to indemnify in an MSA, incorporated into a *Final Decree*. This the Court is required to do for three (3) reasons. First, because NM adheres to the majority view that state courts are not preempted from enforcing divorce decrees by either the USFSPA or *Mansell* provided VA disability benefits are not identified as the source of payment. Secondly, NM courts will not permit employee-spouses to unilaterally defeat or reduce a non-employee spouse's interest in vested and matured retirement benefits and thirdly because neither party has the right to unilaterally effect a *de facto* modification a *Final Decree* by a change in circumstances which occurred after the adjudication.

The Court awards Wife judgment against Husband in an amount equal to 33.16% of the gross amount of Husband's military retirement, less payments, if any, received from January, 2004 to the date judgment enters. Husband's VA disability pay shall not be identified as the source of payment, however. Because the record was insufficiently developed; the Court requests counsel to forthwith stipulate to quantification of the judgment awarded Wife. If counsel are unable to do so, the Court requests prompt notification so that an evidentiary hearing can be convened for that purpose. The Court awards Wife pre and post-judgment interest at the rate of 8.75% per annum, which shall accrue from the date each pension payment should have been but was not paid.

The Court commends both counsel for your excellent advocacy. The Court directs Mr. Marcotte to prepare an Order commemorating the Court's decision within the time constraints and procedure set forth in LR 2-130 A-D.

Sincerely,

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Honorable Ernesto J. Romero

[END OF OPINION. A Notice of Appeal was not filed as of 9/23/04]

SUMMARY OF SEPTEMBER, 2004 FAMILY LAW "BROWN BAG" MEETING

The last meeting of the Family Law Judges was in May 2004. There was no monthly meeting in June, July or August, 2004.

Courthouse Booth Kimberly A. Schavey JD

Ms. Schavey related that the "courthouse booth" project is in need of attorney volunteers. The Courthouse booth project provide legal services and non-court appearance advice to low income persons who are qualified based upon income not to exceed 150% of the federal poverty levels. Ms. Schavey indicated that the highest percentage of service requests is for help in the domestic relations area. Any domestic relations practitioners interested in volunteering may contact Ms. Schavey at **kimberly@nmfamily**law.com.

F.A.I.R. Program- Theresa Miller, Ph.D.

Dr. Miller, whose title is Court Psychologist Director of the FAIR program (acronym for "Family Assessment Intervention Resource) related that this new program is now operational in domestic violence cases. .The FAIR was funded by the Legislature in 2004 for $175,000.00 The target group of the program are parties to a Domestic Violence Order of Protection who have an on-going relationship as the result of being parents. The program goal is to prevent recidivism. FAIR program staff provide intensive therapy to parents and children

who have been involved in domestic violence. Participants receive intensive individual and group therapy at no charge by clinical interns who are Ph.D. candidates. FAIR is available to qualifying families referred by a DV commissioner or District Judge in a domestic violence case.

Participation in FAIR has no relation to an Order of Protection being dismissed or held in abeyance and the goal of the program is not to re-unite families but to prevent future acts of domestic violence. The criterion for admission into the FAIR program are:

1. Domestic abuse male towards female
2. A child or children in common
3. One of the parties is a Bernalillo County resident
4. A restraining order has been issued.
5. The parties are fluent in English. Parents who speak Spanish only are excluded from participation.

"<u>Reintegration Issues</u>" Barbara Wasylenki and Jan Griffin
Good Samaritan Counseling Center

Ms. Wasylenki and Ms. Griffin presented areas of concern to mental health care providers delivering services to parents and/or children in contested custody cases pursuant to Court order. Amongst them is what feedback, if any, the Court expects once parents are referred to counseling services. Ms. Wasylenki stated that in view of the regulations governing professional licensure; providing "feedback" regarding services provided is difficult if not impermissible. Judge Walker stated that the court is not particularly interested in receiving feedback from the therapists to whom referrals are made but is mainly concerned with "compliance" issues. In other words whether the parties have complied with the court's orders for therapeutic intervention.

Ms. Waslinki also indicated that the therapists at Good Samaritan Counseling are encountering difficulty with prospective clients who are referred to their service for "wiseperson" services. That comment sparked considerable discussion because of the inherent ambiguity in the term "wiseperson" which has neither statutory or case law basis, but exists as the creation of retired District

Judge Anne Kass. It was the consensus of the commentators that the term "wiseperson" is ambiguous and creates communication and expectation problems.

Clerk's Issues

Attorneys Brad Ziekus and Linda Ellefson described the "log jam" that persistently exists at the Domestic Relations Clerk's Office and the excessive amount of time it takes to file a Minute Order following a hearing because of self-represented persons at the counter asking question after question of the counter clerks. The import of this situation is that parties to a domestic relations action who are represented by counsel are penalized by the slow service at the DR counter because they have to pay their attorneys to stand in line and inordinate amount of time. Mr. Ziekus suggested that the court implement a "Minute Order" window and Ms. Ellefson suggested an "Attorneys Only" window at the Clerk's desk. Judge Romero indicated his support for the immediate creation of an "attorneys only" window at the DR desk. Ms. Juanita Duran, 2nd J.D. Court Administrator] related that administration would act quickly on the request and would have feed back by the next meeting.

THE NEXT BROWNBAG FAMILY COURT MONTHLY MEETING WILL BE HELD MONDAY, OCTOBER 4, 2004 from 12 p.m. to 1 p.m. on the 3rd Floor conference room at the District Courthouse at 400 Lomas NW, Albuquerque, NM. The public as well as the practicing bar is invited.